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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 537

EASTERN SUGAR ASSOCIATES,
Petitioners,

—against—

THE PEOPLE OF PUERTO RICO,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT THEREOF

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To the Honorable the Chief Justice and Associate Justices of the United States:

Trustees, known as Eastern Sugar Associates, defendants in the above-entitled action, respectfully pray the issuance of a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit to review an order and decision of the Circuit Court of Appeals for the First Circuit rendered herein June 28, 1946 (R. pp. 89-103).

Statement of Matter Involved

This is a condemnation proceeding which was commenced in the District Court of the Judicial District of Humacao, Puerto Rico and thereafter removed to the United States District Court for the District of Puerto Rico (Order, R. 51). The suit was brought by respondent,

for and on behalf of the "Land Authority of Puerto Rico", an entity created by Act No. 26 of the Legislative Assembly of Puerto Rico, approved April 12, 1941, (Session Laws of Puerto Rico, 1941, First Reg. Sess. 15th Legislature, No. 26), known as the "Land Law". It sought condemnation of 3,160.6 acres ("cuerdas") of agricultural land belonging to Eastern Sugar Associates and presently devoted to the raising of sugar cane and cattle (Stipulation, R. 54). This property is located on the Island of Vieques, a municipality of Puerto Rico (R. 2).

This petition seeks review of a Circuit Court decision which sustained the condemnation, and in so doing, departed from the rule in *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, 79-80. It presents a question of the greatest importance not only to the territory of Puerto Rico but the entire United States. That question is, whether a legislative program which has as its declared purpose the complete socialization of the agricultural economy, as does the Land Law, meets the requirements of the Federal Constitution and §2 of the Organic Act of Puerto Rico (39 Stat. 951; 48 U. S. C. A. §737). Assuming that it does not, as the United States District Court for the District of Puerto Rico held in this case, (R. 77, 79 and 83), there is also the fundamental question left open, or at least in serious doubt, by *United States ex. rel. T. V. A.* v. *Welch*, U. S. , 90 L. Ed. 686 (March 25, 1946); namely, whether the determination of a legislature, or its authorized agency, as to "what type of taking is for a public use" is subject to judicial review, or is unassailable and "could 'not be set aside by a court'" (90 L. Ed. at 689, 691, 692; see also R. 77 and 97).

The petition of condemnation alleges as the purposes for which the defendants' lands are sought to be condemned, the following (R. 3):

> "3. The Land Authority desires to condemn the said lands to carry out all of the objects or purposes of the Land Law of Puerto Rico in force, that is to say:
>
> (a) Distribution and transfer of lands to a number of 'squatters' ('agregados') at the rate of one parcel of not less than one fourth of a cuerda nor more than three cuerdas per family, in which said 'squatters' may erect their dwellings, in harmony with the provisions of Title Fifth of the said Land Law.
>
> (b) Distribution and operation of lands in individual farms whose area shall fluctuate between five (5) and twenty-five (25) cuerdas, in harmony with the provisions of Title 25 and following of the said Land Law.
>
> (c) Establishment of farms of proportional benefit whose area shall fluctuate between one hundred (100) and five hundred (500) acres to be dedicated principally to the planting and cultivation of sugar cane in harmony with the provisions of Title Fifth of the said Land Law and Law numbered 90 approved May 11, 1944."

According to the Land Law, the Authority has "power to sell, alienate, cede or transfer the land acquired to individuals and agricultural cooperatives in accordance with the provisions of this Act and for the purposes hereof effective" (*sic*, Sec. 24). In the case of disposition of lands to *agregados* as alleged in paragraph "3(a)" of the condemnation petition, the transfer shall be made

"gratuitously" (Land Law, Sec. 76), and of the larger parcels of 5 to 25 acres, referred to in paragraph "3(b)", on a 40 year payment basis (Land Law, Sec. 25).

In addition to the three purposes contained in the Land Law itself, the Land Authority is authorized by the separate statute, Act. No. 90 of May 11, 1944, (Session Laws of Puerto Rico, 1944, Fourth Reg. Sess. 15th Legislature), to acquire and operate for its own account and profit these particular lands here sought to be condemned, which is in effect a fourth purpose for which they may be used (R. 94).

The legislature of Puerto Rico in adopting the Land Law states that it is "To promote the welfare of the inhabitants of Puerto Rico * * * by providing an improved distribution of agricultural wealth." (Title of Land Law). It goes on to declare it to be "the policy of the People of Puerto Rico that finally each person who tills the land shall be the owner of that land which supports him." (Statement of Motives, Land Law).

In acquiring land to dispose of for the purposes specified in the Land Law, the Authority, which has "juridical personality" separate and apart from the government of Puerto Rico, is granted unlimited power, subject to no review, to select any real property, regardless of size, of any private individual, anywhere throughout the entire island of Puerto Rico (Land Law, Sec. 8, 11).

After the present proceeding was removed to the United States District Court for the District of Puerto Rico, the defendants answered the petition (R. 58-63) and moved simultaneously for dismissal thereof (R. 56, 57), on the grounds, *inter alia*, that the proposed condemnation of defendants' property was not for "public use", was a taking

without "due process of law", and denied to defendants the "equal protection of the laws", as required by the Fifth and Fourteenth Amendments of the Federal Constitution and Section 2 of the Organic Act of Puerto Rico (48 USCA §737).

The United States District Court issued a restraining order against interference by the Land Authority with defendants' possession and title (R. 52, 53), and as heretofore indicated, sustained defendants' motion for dismissal of the condemnation (R. 83). However, it found unnecessary to determine more than that this taking was not for a "public use", that it did not meet the requirement of "due process of law" and that the Court had power to review and to declare unconstitutional the legislative action (R. 77, 79, 82).

The decision of the Circuit Court of Appeals of the First Circuit, which is here sought to be reviewed, assumed the power of judicial review (R. 97), passed upon all the Federal questions presented in this case and held unanimously that the condemnation met the requirements of the Federal Constitution (R. 100), and thus approved transfer of title to the Land Authority of Puerto Rico.

In addition to procuring land from private individuals throughout the Island of Puerto Rico as it seeks to do in the present case, the Authority is empowered by the Land Law to acquire for the same purposes, the lands of *corporations* in excess of 500 acres which are held in violation of the Joint Resolution of Congress No. 23 of May 1, 1900, (31 Stat. 716, 48 U. S. C. A. §752) popularly referred to as "the 500 acre law" (Land Law, Sec. 14).

It should be emphasized, however, that the present proceeding does not involve an acquisition from this source

(R. 82). Indeed, there is no contention that the Petitioners have violated any statute limiting the ownership of land (Condemnation Petition, R. 2). In fact, the case is almost the reverse, for it is petitioner's position, expressed as a further ground of its motion for dismissal (R. 56-7) that the Land Authority has all the essential attributes of a corporation and as such is violating both the intent and the letter of the Joint Resolution of Congress just as much as any other corporation would be, if permitted to enter upon and control the agricultural lands which are sought in these proceedings (R. 57). If "it would not be in the interest of a million people crowded upon a territory of 100 by 40 miles in extent, to have one corporation own all or substantially all the land", as was stated in the Congressional debates when the "500 acre law" was enacted (33 Cong. Rec. 4620-1), such a condition is nevertheless the almost inevitable result of the Land Law and its vehicle, the Land Authority.

However, the basic questions presented are whether the Land Law meets the "due process" and "equal protection" requirements of the Federal Constitution and the Organic Act, whether "the appellees' land is sought to be taken for a public use" (C.C.A. Opinion R. p. 94), and if not, whether the legislative finding in this regard is subject to judicial review.

Jurisdictional Statement

The jurisdiction of this Court is invoked under §240(a) of the Judicial Code, as amended by the Act of February 13, 1925, 28 U.S.C.A. § 347. Application is made pursuant to Rule 38, par. 5, subd. (b) of the rules of this

Court, on the ground that there are presented here important questions of Federal law with regard to which review should be granted by this Court in the exercise of sound judicial discretion.

The statutes which give rise to these questions are an integral part of the "Matter Involved". Appropriate summary of their pertinent provisions and citations have been included above under that heading.

The decision and order of the Circuit Court of Appeals herein were filed on June 28, 1946 (R. 102, 103). The order for mandate was entered on the same date (R. 103). On July 8, 1946 the mandate was stayed until further order of the Circuit Court, pending this application for a writ of certiorari.

Questions Presented

1. Assuming that economic and social conditions in Puerto Rico are such as to warrant Government action and assuming that the Insular Legislature has power to enact laws directed to remedying such condition, does the action which the Legislature has taken in adopting the Land Law and Act 90 of May 11, 1944, meet the "public use", "due process of law" and "equal protection" requirements of the Federal Constitution and of the Organic Act of Puerto Rico, in that

a. the legislation authorizes the condemnation of petitioners' lands for "transfer * * * to individuals and agricultural cooperatives", so that those individuals may possess "the piece of land that encloses their homes" and reap the rewards of ownership of agricultural land which now belong to petitioners?

b. the legislation authorizes condemnation of petitioners' lands so that the state, either directly or through a public or quasi-public organization, the Land Authority, may engage for its own account and profit in the same private enterprise now conducted by petitioners?

c. petitioners' lands are sought to be taken for this program, while other citizens whose lands are devoted to the same uses may under the Land Law remain undisturbed in their ownership?

2. Assuming a negative answer to question "1", is the legislative action subject to judicial review?

3. Does the Joint Resolution of Congress No. 23 of May 1, 1900, limiting the ownership and control of agricultural land by "every corporation" in Puerto Rico to 500 acres, apply to the Land Authority created by the Legislative Assembly of Puerto Rico?

Reasons for Allowing the Writ

1. In holding that the Land Law and Act No. 90 of May 11, 1944 do not violate the Federal Constitution and § 2 of the Organic Act of Puerto Rico, the Circuit Court departed from the rule stated in *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, 79-80; *Hairston* v. *Danville & Western Railway Co.*, 208 U. S. 598, 605-606.

2. This proceeding and petition present a question of national significance. In using the power of eminent domain, not only to carry out a program of re-distribution of agricultural wealth, but to actually take over and operate

petitioners' private agricultural lands for the account and profit of the state, the action of the Insular Legislature presents a situation which goes far beyond any case ever presented in this Court. Indeed, this proceeding raises squarely the issue whether there is any limitation on the legislature of Puerto Rico, or for that matter on the legislature of any state of the Union, to condemn private property for any ends which the *legislature* in good faith sees fit.

3. It is a Federal question of first importance in future condemnation proceedings throughout the country whether the right to judicial review of legislative action so clearly announced in *Cincinnati* v. *Vester,* 281 U. S. 439, 446 and *Rindge Co.* v. *Los Angeles,* 262 U. S. 700, 705, has been altered by this Court's decision in *United States, ex rel. T. V. A.* v. *Welch, et al.,* U. S. , 90 L. Ed. 686. The doubt which the *Welch* case cast upon this former rule is indicated by the opinion of the Circuit Court in the instant case wherein it was stated (R. 97):

> "But at the threshold of our consideration of this question, we come face to face with the question upon which the Supreme Court was apparently divided in *United States, ex rel. Tennessee Valley Authority* v. *Welch et al.,* decided March 25, 1946, that is, the question whether a legislative decision that a taking is for a public use is subject to judicial review."

4. Necessarily appropriate to a consideration of this program of agrarian socialization is a determination by this Court of the equally important issue whether the Land Authority in carrying out these far-reaching acquisitions is not itself coming squarely within the prohibition on

large land holdings which was sought to be prevented by *Congress,* the "ultimate legislative guardian of the Island's welfare", (*Puerto Rico* v. *Rubert Hermanis, Inc.,* 309 U. S. 543, 549; Joint Resolution of Congress Act No. 23 of May 1, 1900).

Prayer

For the foregoing reasons, which are further developed in the accompanying brief, your petitioner prays that a writ of certiorari issue out of this Court to the United States Circuit Court of Appeals for the First Circuit commanding said Court to certify and send to this Court on a date to be designated, a full and complete transcript of the record and of all proceedings in the Circuit Court of Appeals had in this case, to the end that this case may be reviewed and determined by this Court; that the order and decision of the Circuit Court of Appeals be reversed; and that your petitioner be granted such other and further relief as may be proper.

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September 25, 1946.

BRIEF IN SUPPORT OF PETITION

Opinions Below

The opinion of the United States District Court for the District of Puerto Rico, granting dismissal of this condemnation proceeding (R. 73-82) is not reported. The opinion of the Circuit Court of Appeals for the First Circuit, reversing the District Court (R. 89-102) is reported in 156 F. (2nd) 316.

Jurisdiction of this Court

This has already been stated in the preceding Petition under the heading "Jurisdictional Statement".

Statement of the Case

This has already been stated in the preceding Petition under "Statement of Matter Involved".

Specifications of Errors to be Urged

1. The Circuit Court of Appeals for the First Circuit erred in denying to petitioners the protection of their rights guaranteed by the Fifth and Fourteenth Amendments to the Constitution of the United States and by §2 of the Organic Act of Puerto Rico, in that

a. it approved the taking of petitioner's property for transfer to other private individuals for their independent and exclusive use;

b. it approved the taking of petitioner's property in order that other private individuals or the Land Authority may engage for their own account and profit in the same private enterprise now conducted by petitioners; and

c. it used as the only test of the constitutionality of this program "whether the means chosen are reasonably calculated to cure the evils reasonably believed by the legislature to exist" (R. 100-101) and ignored the rights of individuals defined by the rule stated in *Thompson* v. *Consolidated Gas Co.*, 300 U. S. 55, 79-80 and *Hairston* v. *Danville & Western Railway Co.*, 208 U. S. 598, 605-606.

2. The Circuit Court was also in error in failing *affirmatively* to hold that petitioners are entitled to judicial review of the action of the Insular Legislature.

3. The Circuit Court likewise erred in not holding that the Land Authority of Puerto Rico lacks capacity to acquire lands in excess of 500 acres.

ARGUMENT

Preliminary Statement

Two directly conflicting concepts are presented by the legislation under examination: One is the declared fundamental right of a person to own his own home and bargain his labor freely ("Statement of Motives"). Purporting to accomplish this end, the legislation proposes to condemn the property of those who have and divide it among those

who have not. The other is that the state, for the avowed purpose of the public welfare may condemn private property to be operated by it, through a public or quasi-public corporation, for its own account and profit or for the profit of selected persons, (Land Law, Sec. 24, 25; Act No. 90 of May 11, 1944).

Since this second objective of the Legislature is apparently directed to the taking over and operating by the Government of all private agricultural enterprise for its own account, either directly or indirectly, it is the very antithesis of the individual freedom for which the legislation also purports to provide. The mere statement of these conflicting motives calls for an examination by this Court to determine whether the purposes and the means whereby such purposes are sought to be effectuated do not exceed the legislative power.

Two tendencies in recent years have narrowed the protection at one time afforded by the courts to private ownership of property: one is a broadening of the concept of what is a public purpose, and the other is a narrowing of the extent to which courts may go in examining the announced determination by the legislative branch that the public welfare will be promoted by the acquiring of private property against the will of the owner.

This case presents the question whether there is any limit to that trend and, if so, where.

Surely, if freedom of the individual is to survive, there must be some point beyond which his property, as well as his life and liberty is inviolate. Indeed, the Fifth and Fourteenth Amendments, the principles of both of which are directly applicable, make no distinction between life, liberty and property. No person may be deprived of any one of

them without due process of law. If there is any difference in the extent to which one or another of these fundamental rights will be protected, it lies in a difference in what is due process as applied to each of them.

This Court has never departed from the principle, "known to the common law before Magna Charta" and "embodied in that charter" that due process requires the application of "the law of the land" to property rights as well as to the rights of life and liberty. *Ochoa* v. *Hernandez,* 230 U. S. 139, 161.

Moreover, this Court has jealously guarded its power to determine the circumstances under which life and liberty of the individual may be impaired for an alleged benefit to the community as a whole, and has refused to accept the legislative judgment as final as to whether the public welfare will be promoted by their limitation. *Screws* v. *United States,* 325 U. S. 91; *Marsh* v. *Alabama,* 326 U. S. 501. It has never held that its duty is any less with respect to property rights. Nevertheless, the proposition has been urged, and upheld in this case by the Court below (R. 100-101) that the judgment of the legislative branch on this subject is for all practical purposes final in so far as the limitation of property rights is concerned.

Petitioners maintain that this implies a difference in the character of protection accorded to the right of ownership which is not admissible under the Fifth and Fourteenth Amendments, and is in direct conflict with the controlling decisions of this Court. The ultimate effect of the opinion of the Circuit Court is that the state may with impunity not only take away the property of the individual and either give it to others or operate it for its own profit, but may also in a particular case take away the liberty of the indi-

vidual to live a private life, both of which are protected by the Constitution. May the mere declaration of the Legislature that this will promote the public welfare justify the taking of private property and must it be so accepted by the courts? This Court has never so held.

POINT I

The Circuit Court Erred in Holding the Condemnation of Petitioners' Property to be for a "Public Use."

A. The Test Used By the Court was Inadequate and Contrary to Precedent.

The Circuit Court held that it could not "strike down the legislative program for the Island of Vieques as in violation of the appellees' right to due process of law" (R. 100) because

1. the Court would take judicial notice that social and economic conditions in Puerto Rico and Vieques were such as to warrant legislative action, and

2. this legislation "embodied means reasonably calculated to deal with these problems" (R. 101).

It is petitioners' position that this test which the Circuit Court applied is inadequate, in that it would sustain any legislation purporting to deal effectively with a recognized problem. It thus completely begs the question of constitutionality.

For example, if the existence of evils and the effectiveness of the remedy is the sole test, as the Circuit Court made it in this case, a taking (with compensation) of all property in the Territory, personal as well as real, for re-divi-

sion among its citizens could be sustained. While such a method might be most effective in dealing with the evil of extreme poverty among the donees, no one could reasonably contend that it met the requirements of *this* Constitution. Minimum Wage Laws, and Housing Authority Laws under appropriate circumstances are constitutional means of affording economic relief. The question here is whether the means employed by this legislature similarly meet those requirements, and not simply whether the means are *effective* to remedy the conditions involved.

In employing the limited test, which the Circuit Court did, it relied largely (R. 100) upon the *dissenting* opinion of Mr. Justice Brandeis in *New State Ice Co.* v. *Liebman,* 285 U. S. 262 at 280, 286-7, which it quoted from in part as follows:

> "Our function is only to determine the reasonableness of the legislature's belief in the existence of evils and in the effectiveness of the remedy provided."

The *Liebman* case did not concern condemnation, the taking of property against the will of the owner, nor was this dissenting opinion directed to any consideration thereof. The sole question was the extent to which the Court could go in reviewing a statute requiring the licensing of those engaged in the manufacture and sale of ice.

That Mr. Justice Brandeis' views were not directed to condemnation is conclusively indicated by the fact that in a later decision, when writing for a unanimous court, he himself stated the rule for which petitioners contend. That decision, *Thompson* v. *Consolidated Gas Co.,* 300 U. S. 55, 79-80, was strenuously urged upon the Circuit Court but was left unmentioned in its opinion.

In the *Thompson* case the Railroad Commission of Texas had limited the production of natural gas by certain well owners for the purpose of keeping others in business. The object of the Commission's order was to compel the more fortunate operators, who possessed pipelines, to carry to market the product of those who did not have such facilities.

This Court quoted with approval a finding of the District Court that the effect of the action was "In short to compel complainants to afford markets to those having none" (300 U. S. at 78). It went on to state, citing condemnation cases in support thereof (300 U. S. 80):

> "this Court has many times warned that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid. See Hairston v. Danville & Western Ry. Co., 208 U. S. 598, 605, 606; Rindge Co. v. County of Los Angeles, 262 U. S. 700, 705."

B. The Purposes of This Condemnation Are Not Public.

The Circuit Court held quite properly that petitioners' lands may eventually be put "to any one or all of the four uses" set forth, above at pp. 3-4 of this petition, and "Therefore if any one of those uses, each considered, however, as part of a broad, integrated program of agrarian reform as will be pointed out hereafter, is not public, the petition was properly dismissed" (R. 94).

The Circuit Court, however, deviated from this original pronouncement, when it later took the position that since "Each use plays a part in a comprehensive program of social and economic reform", there was "no basis for analyzing each proposed use separately" (R. 98).

In this, petitioner respectfully submits the Circuit Court erred. In the first place, it was in error in relying on the expression "single integrated effort", as used in *U. S. Ex rel. T. V. A.* v. *Welch, et al.*, U. S. 90 L. Ed. 686, for in that case the expression was directed to the entire Tennessee Valley development, the public purpose of which was in no way questioned. Here the "single integrated effort", if legislation with such diametrically opposed objectives can be called "an integrated effort", is itself drawn in question. And this leads to the second error of the Circuit Court in declining to consider the effect of the separate uses to which petitioners' lands may be put. Because these uses evidence such fundamental conflict in objective, there is in fact no central purpose capable of justifying all.

The first contemplates a transfer of the land condemned to a class of private individuals in separate parcels for their respective independent and exclusive uses, namely, the possession of the land that incloses each of their dwellings (Sec. 74).

The second and third, while similar to each other, are wholly different from either the first or the fourth. They envisage the operation of petitioners' lands for similar agricultural purposes, but for the account and profit of other private persons (Sec. 25, 64).

And the fourth use, in turn, differs fundamentally from the first three in that the lands will be operated as they are now, but for the account and profit of the government (Act No. 90 of May 11, 1944; see R. 91).

The fatal defect in the first use to which these lands may be put lies in the fact that it is to be by private persons, singly, for their individual and exclusive benefit.

Thus, it is not a case such as *Fallbrook Irrigation District* v. *Bradley,* 164 U. S. 112; *Clark* v. *Nash,* 198 U. S. 361; *Mt. Vernon Cotton Co.* v. *Alabama Power,* 240 U. S. 30, *Rindge Company* v. *Los Angeles,* 262 U. S. 700, relied upon by the Circuit Court (R. 98-99), which hold merely that "it is not essential that the entire community, nor even any considerable portion, should directly enjoy or participate in any improvement in order to constitute a public use" (262 U. S. at 707).

In the case at bar the first use is not of a "community" nature in any respect, but for the sole enjoyment and benefit of private citizens in their individual capacities.

The Circuit Court conceded "that a taking of property from one, for the purpose of transferring it to another, without anything more," does not conform to due process of law and pointed out that "some public benefit or advantage must accrue from the transfer and mere financial gain to the taker is not enough" (R. 99).

The only benefit which this first use could possibly have, is that accruing to private persons, singly and separately. Surely, public benefit cannot be found in the mere aggregation of separate individual uses, which taken themselves the Circuit Court concedes to be insufficient (R. 99).

The second and third uses fall squarely within the rule of *Thompson* v. *Consolidated Gas Co.,* 300 U. S. 55, 79-80. So far as the large proportional-profit farms are concerned (Land Law Sec. 64) the "use" is merely a transfer of the increments of ownership from one group of private individuals to another. In the *Thompson* case, it will be recalled, the Court specifically forbade compulsory transfer of the benefits of pipeline facilities from those who owned such facilities to those who did not.

If there is any "single integrated effort", to which these different uses are directed, as the Circuit Court held (erroneously we believe), it is the taking over and operation of all agricultural lands by the Government either for its own benefit or for disposition at its will. Ample evidence of this is found in the fourth enumerated use.

Even if it were a proper governmental function for an instrumentality of the state to engage in agricultural enterprise on lands which it acquired by *voluntary purchase and sale* (a proposition which we by no means concede), that still falls far short of sanctioning what is proposed here. When the state can use the supreme power of *eminent domain,* as it seeks to do in this case, to enter into agricultural pursuits by taking over private property already so utilized, the right to own property and the liberty to engage in free enterprise cease to exist. The case is all the clearer where an avowed purpose of the taking is to donate or transfer the land to other private persons, and where there is no showing that the present owners, as here, are not fulfilling in every respect their duty to the public.

It is not surprising that there is no precedent in this Court for such usurpation by legislative fiat.

POINT II

The Circuit Court Erred in Failing to Hold Affirmatively that Petitioners are Entitled to Judicial Review.

The Circuit Court merely assumed, *arguendo,* that petitioners were entitled to judicial review (R. 97). It is respectfully submitted that this Court should clarify the doubt which exists by reason of the decision in *U. S. ex rel. T. V. A.* v. *Welch,* U. S. , 90 L. Ed. 686, by holding that petitioners are entitled to judicial review of the action of the Puerto Rican legislature.

"Judicial review, itself a limitation on popular government, is a fundamental part of our constitutional scheme. But to the legislature no less than to courts is committed the guardianship of deeply-cherished liberties." *Minersville School Dist.* v. *Gobitis,* 310 U. S. 586, 600.

POINT III

The Circuit Court Erred in Not Holding that the Land Authority of Puerto Rico Lacks Capacity to Acquire Lands in Excess of 500 Acres.

Petitioners contend that this condemnation must fail because the Land Authority, being a corporation engaged in agricultural, not only lacks capacity to own and control the 3160.6 acres of agricultural land which it seeks to condemn, but is actually barred therefrom.

The capacity of corporations to own agricultural land in Puerto Rico is limited by the Joint Resolution of Congress of May 1, 1900, which provides that "every corporation hereafter authorized to engaged in agriculture shall by its charter be restricted to the ownership and control of not to exceed 500 acres of land" (R. 102).

The Circuit Court decided that assuming that the Land Authority is a corporation and that it is authorized to engage in agriculture, still "from the wording of the provision * * * it was not intended to apply to governmental corporations created by the Insular Legislature to carry on a public function." (R. 102) Petitioners contend that no such view can possibly be derived from the wording or legislative history of the provision above quoted, and that the Circuit Court in so deciding failed to follow the express mandate of Congress as well as the applicable de-

cisions of this Court. *Nardone* v. *United States,* 302 U. S. 379; *School District* v. *Insurance Co.,* 103 U. S. 707.

POINT IV

Review of These Questions at the Present Time is of Utmost Importance.

It is as essential to the preservation of the petitioner's property rights, as it is important to the entire Territory of Puerto Rico that these questions be reviewed now.

Under the Land Law, title to property does not pass automatically with the filing of the petition, but the Land Authority may, as was done in this case (R. 33) file *ex parte* a Declaration of Taking, in which case it is provided that title passes and the authority may take possession, demolish any structures and construct buildings in advance of the determination of the compensation to be paid (Sec. 16, 17 and 21). The District Court of the Judicial District of Humacao, Puerto Rico, entered a judgment on the Declaration of Taking (R. 37-40) purporting to vest title in the Land Authority, *authorizing it to enter into possession* and directing the Registrar of Property to record its title in fee.

Entry by the Land Authority was only prevented by the restraining order granted by the United States District Court (R. 52). On the return of the mandate of the Circuit Court, which is presently stayed (R. 102-103), the United States District Court would have no other alternative than to dissolve the restraining order and permit the Land Authority to enter into possession, demolish improvements and record its title, leaving the only issue pending in the District Court, as limited by the opinion of the Circuit

Court (R. 100), the determination of the amount of the compensation to be paid.

Thus, it is of fundamental importance to the rights of the parties that these questions be determined now. *United States* v. *General Motors Corporation,* 323 U. S. 373, 377.

Furthermore, what remains to be done "could not remotely give rise to a federal question". *Radio Station WOW, Inc.* v. *Johnson,* 326 U. S. 120, 126, 127. Nor does Respondent differ in this view, for in its brief in the Circuit Court it stated:

> "Decision on this appeal of all questions going to the validity of the condemnation will, if in favor of the Government, permit its program to continue, leaving the amount of just compensation to be decided in the court below."

CONCLUSION

In view of the great importance of these issues, to the country and particularly to the citizens of Puerto Rico, and in view of the immediate necessity to the parties of a determination of these federal questions, it is respectfully submitted that this application should be granted.

Respectfully submitted,

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